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RAILROAD REGULATION UNDER THE TRANSPORTATION ACT

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THE annual meeting of the Academy of Political Science held in New York, November 21-22, 1919, was devoted to a discussion of railroad legislation. At that time it was clear that the period of Federal operation of railroads, which had begun late in December, 1917, was approaching an end, and Congress was wrestling with the problem of formulating a new policy of railroad regulation. It was apparent that there was to be a radical departure from the policy in effect at the time Federal control began. For several years the opinion had been gaining in strength that the system of railroad regulation established by the laws passed in 1887, 1906 and 1910 was faulty in principle, and there was an insistent demand for comprehensive changes. But while there was almost universal dissatisfaction with the old methods of regulation, there was a wide divergence of view as to what the new railroad policy should be. Congress was deluged with "plans", each plan representing, for the most part, an effort to protect the interests of the group which proposed the plan. At the meeting of the Academy in 1919 the leading proposals with respect to railroad legislation were fully discussed. The published proceedings of the meeting¹ constitute a record of the views then held by legislators, railroad managers, shippers, capitalists, labor leaders and prominent economists. The Transportation Act of 1920 showed evidence of the influence of many of the interests represented at that meeting.

The Transportation Act has now been in effect twenty-six months, and the Academy has obtained, from the same interests which took part in the discussion of 1919, an appraisal of the influence of the law upon the transportation business of the United States and upon the many other economic activities with which the railroads are closely related. What have been

¹ PROCEEDINGS OF THE ACADEMY OF POLITICAL SCIENCE, January, 1920.

the chief results of the Transportation Act? Is the policy embodied in that law superior to the policy which preceded it? Does the experience of the past two years warrant a belief that we have a reasonably satisfactory system of railroad regulation? Or should the Transportation Act be amended? And if so, in what particulars?

Among the many changes which the Transportation Act made in the railroad policy of the Federal Government there were three of outstanding importance. First, the law contained a rule of rate-making for the guidance of the Interstate Commerce Commission, that body being directed to establish a level of rates "so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation." The enactment of this rule of rate-making, while something new in Federal legislation, was nevertheless little more than the recognition of a right which the carriers presumably had always possessed. Of much greater significance was the provision of the law designed to meet the practical problem arising from the application of such a rule of rate-making. A body of rates which would yield a fair return to the carriers as a whole would permit many carriers having exceptional advantages in the way of rich traffic territory, favorable conditions of operation, and well located terminals, to obtain a return "substantially and unreasonably in excess of a fair return." The recognition of this fact led to the adoption of a principle before unheard-of in Federal law, the recapture or recovery by the government of a portion of the income of those carriers whose earnings might exceed an amount deemed to be fair and reasonable. It was originally the plan of the Senate to meet the situation created by the unequal earning capacity of strong and weak roads by compelling the consolidation of the railroads of the country into a few great systems, which might employ uniform rates on competitive traffic and, at the same time, earn substantially the

same rate of return upon the value of their property. In the final draft of the bill, however, the compulsory feature of the consolidation program was eliminated.

The second important feature of the Transportation Act represented an effort to bring into effect a unified, national system of rate regulation, to replace the dual system of state and Federal control. The exercise of mutually exclusive powers by state and federal authorities had long been a fruitful source of controversy, and in many instances conflicting policies of regulation had resulted in the creation of those unreasonable discriminations the prevention of which had been the chief purpose of regulating the railroads. Under the Interstate Commerce Act, as amended in 1920, when the Interstate Commerce Commission finds that rates imposed by state authority cause any undue discrimination against interstate or foreign commerce, it may prescribe rates which will remove the discrimination; and such rates must be observed by the carriers, "the law of any State or the decision or order of any State authority to the contrary notwithstanding."

The third outstanding feature of the Transportation Act was the provision for the establishment of machinery to deal with labor difficulties on railroads. The law did not make strikes illegal, but it declared it to be the "duty of all carriers and their officers, employees, and agents to exert every reasonable effort and adopt every available means to avoid any interruption of operation of any carrier growing out of any dispute between the carrier and the employees or subordinate officials thereof." The act directed that all disputes be considered, and if possible, decided, by conference between representatives of the carriers and of the employees directly interested. For the adjudication of disputes not capable of being settled by conference it authorized the creation of Railroad Boards of Labor Adjustment, and established the Railroad Labor Board. The Adjustment Boards were designed to deal with all disputes not involving wages. Because of differences of opinion between employees and managers as to how these Boards should be constituted—whether they should be local, regional or national—they have not been established. The only official labor tribunal to come into existence by virtue of the Transportation Act was the Railroad Labor Board, consisting of

nine members appointed by the President, the members being divided into three equal groups, representing respectively labor, management and the public. The Board was authorized to state what in its opinion constituted reasonable standards of wages and working conditions for railroad labor, being directed to take into consideration the cost of living, the scales of wages in other industries, the hazard of employment, and other relevant circumstances and conditions. The Act did not provide that the decisions of the Board should be binding, and it prescribed no means by which the orders of the Board could be enforced.

Many other changes in the system of railroad regulation were made by the Transportation Act. Among the leading changes in policy was the reversal of the attitude of the government toward the practice of pooling, the fifth section of the Interstate Commerce Act being amended to permit carriers, under the supervision of the Interstate Commerce Commission, to pool both traffic and earnings. The traditional attitude of the government toward railroad consolidation was also modified. Whereas consolidation had previously been regarded with disfavor, and not infrequently declared illegal, the Interstate Commerce Commission was now directed to prepare a plan for the consolidation of all the railroads of the United States into a limited number of competitive systems; and provision was made that after the Commission had completed its work the carriers might voluntarily enter into consolidations conforming to the Commission's final plan. The long-and-short-haul rule of the fourth section of the Interstate Commerce Act was amended, though the general principle adopted in 1910 was retained. The Cummins amendment governing the establishment of rules with respect to the liability of the carriers for lost and damaged freight was again modified, to give added protection to shippers. The long-continued agitation for Federal regulation of railroad capitalization at last bore fruit, the new law requiring carriers desiring to issue securities to obtain the approval of all proposed issues by the Interstate Commerce Commission. Unwise and unnecessary extension of railroad facilities was guarded against by requiring companies contemplating the construction of new lines to secure from the Interstate Commerce Commission a certificate of public con-

venience and necessity. Likewise it was provided that the abandonment of existing railroad facilities could not take place without the consent of the Commission.

The membership of the Commission was increased from nine to eleven. In addition to receiving the new powers previously mentioned, the Commission was authorized to establish minimum as well as maximum rates; it was given a larger degree of control of car service, and authority to direct the routing and distribution of traffic in times of emergency. It was empowered to require a carrier to permit the use of its terminal facilities by other carriers, to prescribe equitable divisions of joint earnings, to direct the routing beyond the lines of initial carriers of traffic not routed by shippers, and to exercise a closer supervision over railroad accounts and records. In one respect the authority of the Commission was curtailed, the time of suspension of proposed changes in rates being reduced from 120 days and an additional period of six months to 120 days and an additional period of 30 days.

In addition to establishing a new system of railroad regulation the Transportation Act made provision for the adjustment of the financial relations of the railroads and the government, gave to such carriers as chose to accept it a guaranty of net earnings for the six months following March 1, 1920, equal to one-half the annual rental paid by the government during the period of Federal control, and appropriated \$300,000,000 out of which railroad companies might secure loans during the first two years of private operation.

The twenty-six months that have passed since the enactment of the Transportation Act have witnessed a trial of virtually all those provisions of the law which marked a departure from the former railroad policy. While conditions have not been such as to permit a thoroughly adequate test of the law, there has been sufficient experience to make possible an estimate of its merits and defects.

Public interest has centered naturally upon the events connected with the three most important features of the Act, those having to do with the application of the rule of rate-making, the regulation of state rates by Federal authority, and the work of the Railroad Labor Board. The operation of other portions of the law has not, however, been attended with

insignificant results. The Interstate Commerce Commission made exceedingly effective use of its increased powers over car service during the months immediately following the termination of Federal control, when the freight business of the railroads was unusually heavy. The regulation of the issuance of securities by the Commission has done much, on the whole, to allay the fear of a recurrence of the financial operations which in past years brought disaster to owners of railroad stocks and bonds. The Commission has published its tentative plan of railroad consolidation, following the plan prepared, at the Commission's direction, by Professor William Z. Ripley of Harvard University. New forms of bills of lading for domestic and export freight have been adopted, defining more clearly the exact nature of the legal obligations of carriers and shippers. The promulgation of numerous orders suspending and cancelling railroad tariffs providing for reductions in charges indicates that the Commission is making use of its new power to establish minimum charges.

One of the first important duties which confronted the Commission, under the terms of the Transportation Act, was to endeavor to establish a level of railroad charges sufficiently high to give the carriers a fair rate of return. The law stipulated that for the two years following March 1, 1920, the Commission should take as a fair rate of return a sum equal to $5\frac{1}{2}$ per cent of the value of the carriers' property, to which might be added, in the discretion of the Commission, one-half of one per cent, to provide for additions and improvements. Late in July, 1920, the Commission ordered a horizontal increase of interstate freight rates and passenger fares. Four rate territories were designated, an Eastern, a Southern, a Western, and a Mountain-Pacific. In the Eastern territory the increase of charges for the transportation of freight was 40 per cent, in the Western district 35 per cent, and in each of the other two regions 25 per cent. A twenty-per-cent increase of passenger fares was authorized, and a surcharge of 50 per cent imposed upon Pullman fares, the proceeds to go to the railroad companies.

After the authorization of the increase of interstate charges the railroad companies asked the various state railroad and utility commissions to authorize equivalent increases upon

intrastate traffic. In some states the applications of the carriers were granted, in some they were denied with respect to passenger fares and granted with respect to freight rates, and in other states the application met with refusals to permit any increase of a substantial nature. The carriers appealed to the Interstate Commerce Commission to order an increase in intrastate charges, where such increases had been denied by state authorities, upon the ground that the disparity between interstate and intrastate rates resulted in an undue discrimination against interstate commerce. The Commission acceded to the request of the carriers, and in a series of notable decisions ordered an increase of intrastate rates and fares corresponding in general to the increases which it had previously authorized on interstate business. A number of states challenged the power of the Commission to increase the general level of intrastate rates. In a test case involving the order made with regard to rates in Wisconsin the Supreme Court upheld the action of the Commission, vindicating its right to alter intrastate rates, not only when there was discrimination against a particular person or locality, but when it should find state rates so low, compared with interstate rates, as to prevent the carriers from earning from their intrastate business a reasonable proportion of the revenue to which, under the terms of the Transportation Act, they are entitled.

Of equal importance with the rate-making activities of the Interstate Commerce Commission has been the work of the Railroad Labor Board. For some time before the Transportation Act was passed there was much unrest in the ranks of railroad labor. Prices had advanced immoderately since 1915, and while the United States Railroad Administration had been generous in its treatment of labor, the workers felt that the advance in the rate of compensation had not been commensurate with the increase in the cost of living. Local disturbances seriously impeded the operation of the railroads during the closing months of Federal control, and a general stoppage of work was averted in the spring of 1920 only because of the prospect of a speedy consideration of the wage situation by the Railroad Labor Board. Immediately after the Board was organized it undertook a settlement of the wages question, and on July 20, 1920, it rendered a decision granting to all classes of railroad labor a substantial increase

of wages, retroactive to May 1. By this decision the annual outlay of the carriers for wages was advanced twenty-two per cent. In the fall of 1920 the railroads found it necessary to take steps to reduce expenses. The business depression which had begun in the summer caused a marked decline in the volume of railroad traffic, and the increased rates granted by the Interstate Commerce Commission fell far short of supplying the fair return of six per cent authorized by the Transportation Act. The Labor Board was asked not only to authorize a reduction of wages, but to abrogate the working rules and agreements which had been inherited from the Railroad Administration, and which the carriers asserted to be the cause of large annual losses. In 1921 the Labor Board authorized a twelve-per-cent reduction of wages, and it also ordered new working agreements to be adopted to replace those put into effect during the period of Federal control. During the short time of its existence the Board has been exceedingly active, handing down numerous decisions affecting the entire railroad service, and issuing many orders with respect to disputes on the lines of individual carriers. One of its most noteworthy achievements was the effective part it took in averting the threatened railroad strike in October, 1921.

The operation of the Transportation Act has evoked a great deal of criticism. It was unfortunate that the law had its earliest trial during a period of business depression. It was particularly unfortunate that the large rate increases granted by the Interstate Commerce Commission came at a time when the general level of commodity prices, and especially of the prices of farm products, was steadily declining. While there is little ground for the belief that the increase of transportation rates contributed in any marked degree to the business depression, it was inevitable that in many quarters the new rates should be held as the primary cause of the hard times. There have been many demands for the unconditional repeal of the entire rule of rate-making, and there has also been an unfortunate tendency to encourage interference with the work of the Interstate Commerce Commission by legislative and executive officials. The work which the Commission has done in the readjustment of rates believed to be unreasonably high and the recent partial revival of business have done much, however, to still the criticism of the rate-making provisions of the

Transportation Act. So far there has been no recapture of excess earnings from individual carriers, though the Commission is now preparing to undertake this work. It is highly probable that the railroads affected will challenge the constitutionality of this feature of the law. The carriers of trunk line and of central freight association territories have already called into question the legal right of the Commission to order a general readjustment of the divisions of joint earnings.

The invasion by the Federal Government of the right previously exercised by states to regulate intrastate commerce has been more sharply criticised than the rule of rate-making, and an attempt is being made to modify that portion of the law which, according to the Supreme Court, gives the Interstate Commerce Commission authority to adjust the general level of intrastate rates in accordance with the needs of the carriers for revenue. Senator Cummins has said that it was not the intention of the framers of the law to give to the Commission such sweeping power, it being thought that the law would permit the Commission to modify intrastate rates only in cases where the disparity between state and interstate charges resulted in discrimination against particular individuals or particular localities.

The chief criticism of the Transportation Act has been in connection with the provisions for the adjustment of labor troubles. The Labor Board has met with a comparatively small measure of public approval, and it has not been looked upon with great favor either by the railroad managers or by the railroad employees. Railroad labor unions have achieved a position of much strength in recent years by virtue of the Adamson Law and because of the deferential policy of the Railroad Administration. They have a feeling of confidence in their power to bring to a successful issue a contest with the railroad managers, and consequently they are inclined to regard with disfavor the creation of arbitration tribunals of any character. Because of the business depression the railroad managers have a large measure of confidence in their ability to dictate terms to their working forces in case of a strike, and many of them feel that the Labor Board is an impediment to the speedy readjustment of wages and working rules which in their opinion the present condition of the transportation industry justifies. The difference of opinion be-

tween railroad executives and the Board as to the scope of the Board's jurisdiction has tended to prevent the new tribunal from exercising the influence that was expected. The public, on the whole, has been impressed with the fact that the scale of wages of railroad workers has not declined so rapidly as the scale of wages of workers in other industries, and feeling that high wages have been largely responsible for high railroad rates, it has been inclined to condemn the Railroad Labor Board for failure to bring about a more expeditious reduction of railroad expenses. The effective action of the Board at the time of the threatened strike in October, 1921, tended, however, greatly to increase its prestige, and gained for it many more friends than it had previously possessed. Perhaps the greatest pretext for criticism of the Labor Board, both by the carriers and by the public, has been the fact that the control of railroad wages has been entrusted to one administrative body and the control of rates to another, without specific provision for close cooperation between the two. The demand for the unconditional abolition of the Labor Board has not been so urgent as the demand that the Board be abolished and its functions vested in the Interstate Commerce Commission.

It is not improbable that the Transportation Act will be modified in the not distant future, though with the partial recovery of business and the gradual improvement of the financial position of the carriers the opinion is unquestionably gaining strength that it would be well to leave the law undisturbed for a time in order to see how it will function under more nearly normal conditions of business than have prevailed during the past two years. At any rate it is not to be expected that the law will be changed as extensively as its severest critics desire. It must be remembered that if the law is amended merely so as to eliminate its three most important features the country will be thrown back upon virtually the same railroad policy that existed in 1917. One has only to remember the almost universal condemnation of that policy to understand how unwise it would be to return to it. Whatever has been the criticism of the Transportation Act there are few who will not admit that the policy which it embodies is superior to the former railroad policy. The general acceptance of this fact affords strong basis for the belief that there will be no hasty and ill-considered changes.